

EXHIBIT F

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Ms. J.P., et al.,
Plaintiffs,
v.
JEFFERSON B. SESSIONS, et al.,
Defendants.

Case No. 2:18-cv-06081-JAK-SK
Assigned to the Hon. John A. Kronstadt

**DEFENDANT DEPARTMENT OF HEALTH AND HUMAN SERVICES'
SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Civil Rules for the Central District of California, Defendant Department of Health and Human Services (“HHS”) and Office of Refugee Resettlement (“ORR”) (collectively “HHS Defendants” or “Defendants”), by and through their attorney, Nicole N. Murley, Senior Litigation Counsel, District Court Section, Office of Immigration Litigation, United States Department of Justice, hereby submit their Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents (“RFP”), propounded on January 10, 2019.

RESERVATION OF RIGHTS

Defendants expressly reserve the right to supplement, clarify, revise or correct any or all of the responses herein at any time. By making the following objections and responses to Plaintiffs' RFPs, Defendants do not waive, and hereby expressly reserve, the right to assert any and all objections to the admissibility of such responses into evidence at the trial of this action, or in any other proceedings, on any and all grounds, including, but not limited to, competency, relevancy, materiality, and

1 privilege. Defendants' Objections are based on the information known to Defendants
2 at this time and are made without prejudice to assertion of additional objections
3 should Defendants identify additional grounds for objection. Furthermore,
4 Defendants respond herein without, in any manner, admitting or implying that
5 Plaintiffs' Requests (or Defendants' responses) are relevant to any party's claim or
6 defense or proportionate to the needs of the case. Any response contained herein will
7 be subject to any protective order subsequently entered in this case. Defendants will
8 supplement our responses consistent with the requirements of Rule 26(e) as
9 additional information becomes available.

10 **OBJECTIONS THAT APPLY TO ALL REQUESTS FOR PRODUCTION**

11 Defendants object to Plaintiffs' RFPs to the extent they call for documents that
12 are publicly available, are already in the custody or control of Plaintiffs or Plaintiffs'
13 counsel, are readily accessible to Plaintiffs, or that would otherwise be less
14 burdensome for Plaintiffs to obtain than for Defendants. *See Fed. R. Civ. P.*
15 26(b)(2)(C)(i).

16 Defendants object to Plaintiffs' RFPs to the extent that they fail to specify any
17 time limitation. Defendants have limited the time period for responding to these
18 requests and agree to produce responsive documents from July 1, 2017, to January
19 10, 2019, unless otherwise noted.

20 **OBJECTIONS THAT APPLY TO DEFINITIONS AND INSTRUCTIONS**

21 1. Defendants object to the definition of "COMMUNICATION(S)," which is
22 defined so broadly as to include verbal or non-written communications and is beyond
23 the scope of Rule 34. *See Fed. R. Civ. P.* 34 (allowing requests to inspect or produce
24 documents, electronically stored information, or tangible items).

25 2. Defendants object to Plaintiffs' definition of the terms "DEFENDANTS,"
26 "YOU" or "YOUR" in Definitions 2 and 8 on the grounds that each definition is
27 overly broad, unduly burdensome, and improperly invades the attorney/client
28 privilege or the attorney work-product doctrine. Furthermore, these definitions

1 encompass the entirety of the Department of Justice (“DOJ”), the Department of
2 Homeland Security (“DHS”), and the Department of Health and Human Services
3 (“HHS”), including subordinate entities, components, and employees having no
4 involvement whatsoever with the claims in Plaintiffs’ Complaint. Defendants further
5 object to Definitions 2 and 8 to the extent they purport to require the disclosure of
6 information in the possession, custody, or control of ORR grantees other than
7 Defendants, Fed. R. Civ. P. 34, or seek information that can and should be sought
8 from another entity. Defendants further object to Plaintiffs’ Definitions 2 and 8
9 because they purport to require a government-wide search for documents. Such a
10 government-wide search would be oppressive, overly burdensome, and overbroad,
11 given the claims and defenses in this matter, which relate to a discrete issue.

12 Subject to specific objections enumerated below and in subsequent objections,
13 Defendants interpret the definition of YOU or DEFENDANTS, to the extent it
14 includes ORR, the relevant sub-component of HHS, as including employees of ORR
15 in their official capacity or entities or individuals from whom HHS has the legal right
16 to obtain information relevant to the claims and defenses in this case.

17 HHS Defendants object and respond to these requests solely on behalf of
18 HHS and ORR, as indicated in each response. To the extent that these requests seek
19 information from DOJ or DHS, HHS Defendants direct Plaintiffs to DOJ and DHS
20 Defendants who can provide responses and objections to requests directed to those
21 agencies.

22 3. Defendants object to the definition of “POSSESSION” to the extent that it
23 does not conform to the Ninth Circuit standard for possession, custody, or control.
24 In the Ninth Circuit, the standard for possession, custody, or control is the legal
25 right to obtain documents. *See 7-UP Bottling Co. v. Archer Daniels Midland Co. (In*
26 *re Citric Acid Litig.)*, 191 F.3d 1090, 1107 (9th Cir. 1999). Defendants are only
27 under the obligation to produce relevant, non-privileged information, to the extent
28 that it exists, if individuals, operating in their official governmental capacity, have

1 responsive, non-privileged information that is under the possession, custody, or
2 control of the named Defendants or that the named Defendants have the legal right
3 to obtain on demand. *Id.*

4 Defendants object to the definition of “PUTATIVE CLASS MEMBER”
5 because the Court certified a class with two subclasses on November 5, 2019. The
6 certified class is defined as:

7
8 All adult parents nationwide who entered the United States at or between
9 designated ports of entry, who (1) on or after July 1, 2017, were, are, or
10 will be detained in immigration custody by DHS; and (2) have a minor
11 child who has been, is, or will be separated from them by DHS and
12 detained in DHS or Office of Refugee Resettlement custody or foster
care, absent a demonstration in a hearing that the parent is unfit or
presents a danger to the child.

13 The Court certified the following subclasses:

14
15 (i) the Custody Subclass, which is defined as all members of the class
16 who are currently or will be detained in immigration custody by DHS;
17 and (ii) the Released Subclass, which is defined as all members of the
18 class who were previously detained in immigration custody by DHS, but
who have since been released.

19 Pursuant to the Court’s November 5, 2019 Order, Defendants will
20 construe any references to the putative class as the certified class as defined by
21 the Court.

22 5. HHS Defendants object to the definition of “ZERO TOLERANCE
23 SEPARATION” as the “United States Government’s pattern, practice, or policy of
24 separating migrant parents and children held in immigration detention without a
25 showing that the parent was unfit or presented a danger to the minor child that
26 preliminary enjoined in *Ms. L. v. U.S. Immigration and Customs Enforcement*, No.
27 3:18-cv-00428 (S.D. Cal. June 26, 2018) (Sabraw, J.).” First, HHS Defendants object
28

1 to the Plaintiffs' characterization of the preliminary injunction in *Ms. L. v. U.S.*
2 *Immigration and Customs Enforcement*, No. 3:18-cv-00428 (S.D. Cal. June 26,
3 2018), as it misstates the holdings in that case. Second, the Zero Tolerance Policy
4 issued by then-Attorney General Sessions, dated April 6, 2018, sets forth a policy
5 regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a). Defendants
6 define the Zero Tolerance Policy as a policy that directed each U.S. Attorney's Office
7 along the Southwest Border to adopt a policy to prosecute all DHS referrals of section
8 1325(a) violations, to the extent practicable. On May 11, 2018, then-Secretary
9 Nielsen issued a memorandum directing "all DHS law enforcement officers at the
10 border to refer all illegal border crossers to the Department of Justice for criminal
11 prosecution to the extent practicable."

12

13 **DEFENDANT HHS'S SUPPLEMENTAL RESPONSES TO PLAINTIFFS'**
14 **FIRST SET OF RFPS**

15 **REQUEST FOR PRODUCTION NO. 1**

16 DOCUMENTS sufficient to identify all PUTATIVE CLASS MEMBERS.

17

18 Responses and Objections:

19 HHS Defendants object to this request as Plaintiffs' definition of "putative
20 class members" is overly broad and is not consistent with the Court's definition of
21 the class certified in its November 5, 2019 Order. This request is overly broad and
22 unduly burdensome in that it does not provide any data parameters or limitation on
23 the request for documents. This request is not limited to information generated or
24 existing during a time period that is relevant to the Parties' claims and defenses.

25 Moreover, Request for Production No. 1 does not seek information that is
26 uniquely important to the claims and defenses in this case. *See generally* Complaint,
27 ECF No. 1 ("Compl.") (requesting a court order requiring Defendants to provide
28

1 mental-health screenings before and after reunification to assess Plaintiffs' need for
2 subsequent trauma-informed medical and mental-health services and to offer
3 appropriate trauma-informed medical and mental-health services)¹; *see also* Fed. R.
4 Evid. 401 (defining "relevance"); Fed. R. Civ. P. 26(b)(1) ("Parties may obtain
5 discovery regarding any nonprivileged matter that is relevant to any party's claim or
6 defense and proportional to the needs of the case, considering the importance of the
7 issues at stake in the action, the amount in controversy, the parties' relative access to
8 relevant information, the parties' resources, the importance of the discovery in
9 resolving the issues, and whether the burden or expense of the proposed discovery
10 outweighs its likely benefit."). To the extent that this request also appears to seek
11 information from DHS, HHS Defendants direct Plaintiffs to DHS Defendants who
12 can provide responses and objections to requests directed to that agency. *See* DHS
13 Response to RFP No. 1.

14 In consideration of the Court's November 5, 2019 Order certifying a class,
15 once a protective order is in place, HHS Defendants, in coordination with the other
16 Federal Defendants, will provide a list of class members, to the extent that HHS
17 Defendants have this information and are able to identify class members.

18

19 **REQUEST FOR PRODUCTION NO. 2**

20 All DOCUMENTS relating to the decision to adopt the ZERO TOLERANCE
21 SEPARATION Policy, including but not limited to DOCUMENTS related to the
22 potential effects of the ZERO TOLERANCE SEPARATION Policy on the mental
23 health of separated parents and children.

24

25 ¹ Relevant here, Plaintiffs' claims for relief center around their allegations that by
26 forcibly separating Plaintiffs from their children, Defendants have inflicted upon
27 Plaintiffs extraordinary harm that they would not have otherwise have faced. They
28 further allege that this separation caused exceptional distress and trauma and that the
plaintiffs have not received any mental health services from the government since
they were separated.

1 Responses and Objections:

2 HHS Defendants object to this request to the extent it seeks privileged
3 documents. HHS Defendants object to Request for Production No. 2 as overbroad
4 because it seeks documents and information that are not relevant to the claims and
5 defenses in this case. *See generally* Compl. (requesting a court order requiring
6 Defendants to provide mental-health screenings before and after reunification to
7 assess Plaintiffs' need for subsequent trauma-informed medical and mental-health
8 services and to offer appropriate trauma-informed medical and mental-health
9 services); *see also* Fed. R. Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure
10 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is
11 relevant to any party's claim or defense and proportional to the needs of the case,
12 considering the importance of the issues at stake in the action, the amount in
13 controversy, the parties' relative access to relevant information, the parties'
14 resources, the importance of the discovery in resolving the issues, and whether the
15 burden or expense of the proposed discovery outweighs its likely benefit."). Request
16 for Production No. 2 seeks "all" documents relating to the decision to adopt the Zero
17 Tolerance Separation Policy, regardless of whether that information pertains to the
18 impact of the separations—that occurred as a result of the Zero Tolerance Policy—
19 mental health effects of the alleged family separation policy. Documents and
20 information regarding Defendants' decision to implement the Zero Tolerance Policy
21 are not relevant to Plaintiffs' claims or the relief sought in this case. Specifically, the
22 how or why of the policy has no bearing on Plaintiffs' request for mental health
23 screenings and trauma-informed mental health treatment for class members that
24 Plaintiffs allege is necessary to assess the effect of the separation on class members.

25 HHS further objects to this request because it purports to require the disclosure
26 of information in the possession, custody, or control of entities other than HHS
27 Defendants, Fed. R. Civ. P. 34, or seeks information that can and should be sought
28 from another entity. As noted above, the Zero Tolerance Policy was an enforcement

1 initiative announced by the Department of Justice in conjunction with the Department
2 of Homeland Security. It was not a policy initiative of HHS Defendants. HHS
3 Defendants refer Plaintiffs to DOJ and DHS Defendants. To the extent that this
4 request seeks information from DOJ or DHS, HHS Defendants direct Plaintiffs to
5 DOJ and DHS Defendants who can provide responses and objections to requests
6 directed to those agencies. Based on these objections, HHS Defendants will not
7 produce documents responsive to this request.

8

9 **REQUEST FOR PRODUCTION NO. 3**

10 All DOCUMENTS related to the potential or actual effects of the ZERO
11 TOLERANCE SEPARATION Policy on the mental health of separated parents and
12 children.

13

14 Responses and Objections:

15 HHS Defendants object to this request to the extent it seeks privileged
16 documents. HHS Defendants further object to this request to the extent it seeks
17 information regarding a “Zero Tolerance Separation Policy,” which does not exist.
18 The Zero Tolerance Policy issued by then-Attorney General Sessions, dated April 6,
19 2018, sets forth a policy regarding referrals for criminal prosecution under 8 U.S.C.
20 § 1325(a). On May 11, 2018, then-Secretary Nielsen issued a memorandum directing
21 “all DHS law enforcement officers at the border to refer all illegal border crossers to
22 the Department of Justice for criminal prosecution to the extent practicable.”

23 HHS Defendants further object to this request as overly broad, unduly
24 burdensome, and not limited in time or scope. Request for Production No. 3 is not
25 limited to information generated or existing during a time period that is relevant to
26 the Parties’ claims and defenses. *See generally* Compl. (requesting a court order
27 requiring Defendants to provide mental-health screenings before and after

1 reunification to assess Plaintiffs' need for subsequent trauma-informed medical and
2 mental-health services and to offer appropriate trauma-informed medical and mental-
3 health services); *see also* Fed. R. Evid. 401 (defining "relevance"); Fed. R. Civ.
4 Procedure 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged
5 matter that is relevant to any party's claim or defense and proportional to the needs
6 of the case, considering the importance of the issues at stake in the action, the amount
7 in controversy, the parties' relative access to relevant information, the parties'
8 resources, the importance of the discovery in resolving the issues, and whether the
9 burden or expense of the proposed discovery outweighs its likely benefit."). HHS
10 Defendants object to this request as it appears to require a government-wide search
11 for documents. Such a government-wide search would be oppressive, overly
12 burdensome, and overbroad given the claims and defenses in this matter. Moreover,
13 HHS Defendants object to this request because it seeks to require the disclosure of
14 information in the possession, custody, or control of entities other than HHS
15 Defendants, Fed. R. Civ. P. 34.

16 To the extent that this request appears to seek information from DOJ or DHS,
17 HHS Defendants direct Plaintiffs to DOJ and DHS Defendants who can provide
18 responses and objections to requests directed to those agencies. HHS Defendants
19 further object to this request as vague and ambiguous on the basis that it is unclear
20 what is meant by "potential or actual effects" and "mental health." It is unclear what
21 types of documents Plaintiffs are seeking in their request. Based on these objections,
22 HHS Defendants will produce a sampling of the separated children's health
23 information that might be responsive to this request.

24

25 **REQUEST FOR PRODUCTION NO. 4**

26 All DOCUMENTS related to YOUR press releases or internal memoranda that
27 announced, explained, or implemented the ZERO TOLERANCE SEPARATION
28 Policy, including but not limited the internal memoranda themselves, drafts of those

1 press releases or internal memoranda, and any memoranda or guidance about how to
2 respond to questions from media or PUTATIVE CLASS MEMBERS.

3

4 Responses and Objections:

5 HHS Defendants object to this request to the extent it seeks privileged
6 documents. HHS Defendants further object to this request as overbroad because it
7 seeks documents and information that are not relevant to the claims and defenses in
8 this case. *See generally* Compl. (requesting a court order requiring Defendants to
9 provide mental-health screenings before and after reunification to assess Plaintiffs'
10 need for subsequent trauma-informed medical and mental-health services and to offer
11 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
12 Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure 26(b)(1) (“Parties may
13 obtain discovery regarding any nonprivileged matter that is relevant to any party’s
14 claim or defense and proportional to the needs of the case, considering the importance
15 of the issues at stake in the action, the amount in controversy, the parties’ relative
16 access to relevant information, the parties’ resources, the importance of the discovery
17 in resolving the issues, and whether the burden or expense of the proposed discovery
18 outweighs its likely benefit.”).

19 Moreover, HHS Defendants object to this request because it seeks to require
20 the disclosure of information in the possession, custody, or control of entities other
21 than HHS Defendants, Fed. R. Civ. P. 34, or seeks information that can and should
22 be sought from another entity. To the extent that this request seeks information from
23 DOJ or DHS, HHS Defendants direct Plaintiffs to DOJ and DHS Defendants who
24 can provide responses and objections to requests directed to those agencies. As noted
25 above, the Zero Tolerance Policy was an enforcement initiative announced by the
26 Department of Justice in conjunction with the Department of Homeland Security. It
27 was not a policy initiative of HHS Defendants. Based on these objections, HHS
28 Defendants will not produce documents responsive to this request.

1 **REQUEST FOR PRODUCTION NO. 5**

2 All DOCUMENTS relating to the consideration of family separation as a
3 means to deter immigration, including but not limited to the consideration of family
4 separation discussed by then-DHS Secretary John Kelly on CNN on or about March
5 6, 2017.

6

7 **Responses and Objections:**

8 HHS Defendants object to Request for Production No. 5 as overbroad because
9 it seeks documents and information that are not relevant to the claims and defenses
10 in this case. *See generally* Compl. (requesting a court order requiring Defendants to
11 provide mental-health screenings before and after reunification to assess Plaintiffs'
12 need for subsequent trauma-informed medical and mental-health services and to offer
13 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
14 Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure 26(b)(1) (“Parties may
15 obtain discovery regarding any nonprivileged matter that is relevant to any party’s
16 claim or defense and proportional to the needs of the case, considering the importance
17 of the issues at stake in the action, the amount in controversy, the parties’ relative
18 access to relevant information, the parties’ resources, the importance of the discovery
19 in resolving the issues, and whether the burden or expense of the proposed discovery
20 outweighs its likely benefit.”). HHS Defendants also object to the request to the
21 extent that it seeks the production of deliberative and pre-decisional or otherwise
22 privileged information.

23 Moreover, HHS Defendants object to this request because it seeks to require
24 the disclosure of information in the possession, custody, or control of entities other
25 than HHS Defendants, Fed. R. Civ. P. 34, or seeks information that can and should
26 be sought from another entity. To the extent that this request appears to seek
27 information from DHS, HHS Defendants direct Plaintiffs to DHS Defendants who
28 can provide responses and objections to requests directed to that agency. John Kelly

1 was the Secretary of the Department of Homeland Security, not the Secretary of
2 Health and Human Services. Based on these objections, HHS Defendants will not
3 produce documents responsive to this request.

4

5 **REQUEST FOR PRODUCTION NO. 6**

6 All DOCUMENTS relating to YOUR consideration of alternatives to
7 detention of the PUTATIVE CLASS MEMBERS that would allow families to remain
8 together, including but not limited to community supported models such as the
9 Family Case Management Program that was initially implemented in January 2016.

10

11 **Responses and Objections:**

12 HHS Defendants object to Request for Production No. 6 as overbroad because
13 it seeks documents and information that are not relevant to the claims and defenses
14 in this case. *See generally* Compl. (requesting a court order requiring Defendants to
15 provide mental-health screenings before and after reunification to assess Plaintiffs'
16 need for subsequent trauma-informed medical and mental-health services and to offer
17 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
18 Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure 26(b)(1) ("Parties may
19 obtain discovery regarding any nonprivileged matter that is relevant to any party's
20 claim or defense and proportional to the needs of the case, considering the importance
21 of the issues at stake in the action, the amount in controversy, the parties' relative
22 access to relevant information, the parties' resources, the importance of the discovery
23 in resolving the issues, and whether the burden or expense of the proposed discovery
24 outweighs its likely benefit.").

25 Moreover, HHS Defendants object to this request because it seeks to require
26 the disclosure of information in the possession, custody, or control of entities other
27 than HHS Defendants, Fed. R. Civ. P. 34, or seeks information that can and should
28 be sought from another entity. To the extent that this request appears to seek

1 information from DOJ or DHS, HHS Defendants direct Plaintiffs to DOJ and DHS
2 Defendants who can provide responses and objections to requests directed to those
3 agencies. The Family Case Management Program was a Department of Homeland
4 Security program. Based on these objections, HHS Defendants will not produce
5 documents responsive to this request.

6

7 **REQUEST FOR PRODUCTION NO. 7**

8 All DOCUMENTS related to the decision to close the Family Case
9 Management Program in 2017.

10

11 Responses and Objections:

12 HHS Defendants object to Request for Production No. 7 as overbroad because
13 it seeks documents and information that are not relevant to the claims and defenses
14 in this case. *See generally* Compl. (requesting a court order requiring Defendants to
15 provide mental-health screenings before and after reunification to assess Plaintiffs'
16 need for subsequent trauma-informed medical and mental-health services and to offer
17 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
18 Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure 26(b)(1) (“Parties may
19 obtain discovery regarding any nonprivileged matter that is relevant to any party’s
20 claim or defense and proportional to the needs of the case, considering the importance
21 of the issues at stake in the action, the amount in controversy, the parties’ relative
22 access to relevant information, the parties’ resources, the importance of the discovery
23 in resolving the issues, and whether the burden or expense of the proposed discovery
24 outweighs its likely benefit.”).

25 Moreover, HHS Defendants object to this request because it seeks to require
26 the disclosure of information in the possession, custody, or control of entities other
27 than HHS Defendants, Fed. R. Civ. P. 34, or seeks information that can and should
28 be sought from another entity. The Family Case Management Program was a

1 Department of Homeland Security program. To the extent that this request appears
2 to seek information from DOJ or DHS, HHS Defendants direct Plaintiffs to DOJ and
3 DHS Defendants who can provide responses and objections to requests directed to
4 those agencies. Based on these objections, HHS Defendants will not produce
5 documents responsive to this request.

6

7 **REQUEST FOR PRODUCTION NO. 8**

8 All DOCUMENTS relating to any programs You have implemented to
9 mitigate or remediate the mental health impact of the ZERO TOLERANCE
10 SEPARATION POLICY on the PUTATIVE CLASS MEMBERS or their children.

11

12 Responses and Objections:

13 Defendants object to this request as Plaintiffs' definition of "putative class
14 members" is overly broad and is not consistent with the Court's definition of the class
15 certified in its November 5, 2019 order. HHS Defendants object to this request to the
16 extent it seeks information regarding a "Zero Tolerance Separation Policy," which
17 does not exist. The Zero Tolerance Policy issued by then-Attorney General Sessions,
18 dated April 6, 2018, sets forth a policy regarding referrals for criminal prosecution
19 under 8 U.S.C. § 1325(a). On May 11, 2018, then-Secretary Nielsen issued a
20 memorandum directing "all DHS law enforcement officers at the border to refer all
21 illegal border crossers to the Department of Justice for criminal prosecution to the
22 extent practicable."

23 HHS Defendants further object to this request as overly broad and unduly
24 burdensome and not limited in time or scope. Request for Production No. 8 is not
25 limited to information generated or existing during a time period that is relevant to
26 the Parties' claims and defenses. HHS Defendants object to this request as vague and
27 ambiguous on the basis that it is unclear what is meant by "mental health impact."

28

1 Notwithstanding the general and specific objections, and without waiving any
2 objections, HHS will produce non-privileged, responsive documents on a rolling
3 basis after the Court enters an appropriate protective order. *See also* DHS Response
4 to RFP No. 8.

5

6 **REQUEST FOR PRODUCTION NO. 9**

7 All DOCUMENTS, analyses, reports, and drafts thereof supporting Defendant
8 Nielsen's assertion that the ZERO TOLERANCE SEPARATION Policy was
9 necessary due to the marked increase in the number of adults arriving at the border
10 with children and fraudulently claiming to be a family unit.

11

12 Responses and Objections:

13 HHS Defendants object to Request for Production No. 9 as overbroad because
14 it seeks documents and information that are not relevant to the claims and defenses
15 in this case. *See generally* Compl. (requesting a court order requiring Defendants to
16 provide mental-health screenings before and after reunification to assess Plaintiffs'
17 need for subsequent trauma-informed medical and mental-health services and to offer
18 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
19 Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure 26(b)(1) ("Parties may
20 obtain discovery regarding any nonprivileged matter that is relevant to any party's
21 claim or defense and proportional to the needs of the case, considering the importance
22 of the issues at stake in the action, the amount in controversy, the parties' relative
23 access to relevant information, the parties' resources, the importance of the discovery
24 in resolving the issues, and whether the burden or expense of the proposed discovery
25 outweighs its likely benefit.").

26 Moreover, HHS Defendants object to this request because it seeks to require
27 the disclosure of information in the possession, custody, or control of entities other
28 than HHS Defendants, Fed. R. Civ. P. 34, or seeks information that can and should

1 be sought from another entity. As noted above, the Zero Tolerance Policy refers to a
2 policy initiative announced by the Department of Justice in conjunction with the
3 Department of Homeland Security; this is not a policy directive of HHS Defendants.
4 To the extent that this request appears to seek information from DHS, HHS
5 Defendants direct Plaintiffs to DHS Defendants who can provide responses and
6 objections to requests directed to that agency. Based on these objections, HHS
7 Defendants will not produce documents responsive to this request.

8

9 **REQUEST FOR PRODUCTION NO. 10**

10 All DOCUMENTS, analyses, reports, and drafts thereof supporting President
11 Trump's statement that 80 percent of migrants who are released never show up for
12 their immigration hearings and disappear into the country.

13

14 **Responses and Objections:**

15 HHS Defendants object to this request as overbroad because it seeks
16 documents and information that are not relevant to the claims and defenses in this
17 case. *See generally* Compl. (requesting a court order requiring Defendants to provide
18 mental-health screenings before and after reunification to assess Plaintiffs' need for
19 subsequent trauma-informed medical and mental-health services and to offer
20 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
21 Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure 26(b)(1) ("Parties may
22 obtain discovery regarding any nonprivileged matter that is relevant to any party's
23 claim or defense and proportional to the needs of the case, considering the importance
24 of the issues at stake in the action, the amount in controversy, the parties' relative
25 access to relevant information, the parties' resources, the importance of the discovery
26 in resolving the issues, and whether the burden or expense of the proposed discovery
27 outweighs its likely benefit."). An alleged statement regarding the percentage of
28 migrants who abscond into the interior has no bearing on Plaintiffs' request for

1 mental health screenings and trauma-informed mental health treatment for class
2 members that Plaintiffs allege is necessary to assess the effect of the separation on
3 class members. *See generally* Compl., ECF No. 1. This request is also not limited to
4 information generated or existing during a time period that is relevant to the Parties'
5 claims and defenses.

6 HHS Defendants further object to Request for Production No. 10 because it
7 purports to require a government-wide search for documents. Such a government-
8 wide search would be oppressive, overly burdensome and overbroad, given the
9 claims and defenses in this matter.

10 Moreover, HHS Defendants object to this request to the extent Plaintiffs
11 purport to require the disclosure of information in the possession, custody, or control
12 of entities other than HHS Defendants, Fed. R. Civ. P. 34, or seek information that
13 can and should be sought from another entity. HHS Defendants object to this request
14 to the extent it seeks documents and information for which HHS Defendants lack a
15 basis for response, as it seeks documents considered by a non-HHS entity. To the
16 extent that this request appears to seek information from DOJ or DHS, HHS
17 Defendants direct Plaintiffs to DOJ and DHS Defendants who can provide responses
18 and objections to requests directed to those agencies. Based on these objections, HHS
19 Defendants will not be producing documents responsive to this request.

20

21 **REQUEST FOR PRODUCTION NO. 11**

22 All DOCUMENTS related to the testimony Commander Jonathan White,
23 Deputy Director for Children's Programs of the Office of Refugee Resettlement,
24 before the Senate Judiciary Committee on or about July 31, 2018, including but not
25 limited to documents used in or reflecting Commander White's preparation for that
26 testimony and documents related to his testimony that concerns were raised during

1 the deliberative process about the potential harm to children resulting from family
2 separation.

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4 Responses and Objections:

5 HHS Defendants object to this request as ambiguous, as it fails to identify a
6 specific statement or representation by Commander White before the Senate
7 Judiciary Committee for which related documents are sought.

8 HHS Defendants object to Request for Production No. 11 as overbroad because
9 it seeks documents and information that are not relevant to the claims and defenses
10 in this case. *See generally* Compl. (requesting a court order requiring Defendants to
11 provide mental-health screenings before and after reunification to assess Plaintiffs'
12 need for subsequent trauma-informed medical and mental-health services and to offer
13 appropriate trauma-informed medical and mental-health services); *see also* Fed. R.
14 Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure 26(b)(1) (“Parties may
15 obtain discovery regarding any nonprivileged matter that is relevant to any party’s
16 claim or defense and proportional to the needs of the case, considering the importance
17 of the issues at stake in the action, the amount in controversy, the parties’ relative
18 access to relevant information, the parties’ resources, the importance of the discovery
19 in resolving the issues, and whether the burden or expense of the proposed discovery
20 outweighs its likely benefit.”). To the extent that Plaintiffs request documents used
21 to prepare for or relating to Commander White’s testimony before the Senate
22 Judiciary Committee on July 31, 2018, this request is not limited to documents or
23 information relevant to Plaintiffs’ request for mental health screenings and trauma-
24 informed mental health treatment.

25 Notwithstanding the general and specific objections, and without waiving any
26 objections, HHS will produce any non-privileged, responsive documents on a rolling
27 basis after the Court enters an appropriate protective order.

1 **REQUEST FOR PRODUCTION NO. 12**

2 All DOCUMENTS relating to any health examination of any PUTATIVE
3 CLASS MEMBERS or their children while in government custody.

5 **Responses and Objections:**

6 HHS Defendants object to this request as Plaintiffs' definition of "putative
7 class members" is overly broad and is not consistent with the Court's definition of
8 the class certified in its November 5, 2019 Order. This request is overly broad and
9 unduly burdensome in that it does not provide any data parameters or limitation on
10 the request for documents.

11 HHS Defendants also object to this request on the basis that it is overly broad,
12 unduly burdensome, and not proportional to the needs of this case in that it seeks "all"
13 documents relating to medical services pertaining to putative class members and their
14 children regardless of whether those medical services pertain to mental health
15 treatment and screening, which is the subject of this lawsuit.

16 Further, to compile "all" documents relating to "any health examination" as to
17 each child of a class member is an unnecessary burden on HHS. Compliance with
18 such a request would be very expensive and extremely burdensome. HHS would have
19 to search and collect health documents for thousands of children of class members in
20 over one hundred care providers' facilities across the country. HHS would have to
21 deploy hundreds of ORR staff resulting in considerable hardship to ORR's core
22 functions and its ability to care for the unaccompanied alien children presently in its
23 custody.

24 To the extent that ORR has responsive non-privileged information, subject to
25 and without waiving the foregoing objections, ORR will produce the medical records
26 of the Named Plaintiffs' children identified in the Plaintiffs' complaint, provided that
27 a protective order is in place. For the health information of the thousands of children
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1 of class members, HHS Defendants propose that Plaintiffs select a statistical
2 sampling number of children of class-members whose health information they would
3 like to obtain, rather than seeking a burdensome discovery of health information for
4 all of the children of class members.

5 In addition, ORR will not release any medical or mental health records of a
6 child of a class member absent a signed waiver from the child's legal guardian,
7 consenting to the disclosure. If a signed waiver from the child's legal guardian is
8 provided, and consistent with the terms of a protective order to be entered in this case,
9 Defendant HHS (through Defendant ORR) will produce the health information for
10 the list of children identified by Plaintiffs. *See also* DHS Response to RFP No. 12.
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12 **REQUEST FOR PRODUCTION NO. 13**

13 All DOCUMENTS relating to the mental health of PUTATIVE CLASS
14 MEMBERS or their children, including but not limited to DOCUMENTS relating to
15 mental health screenings, evaluations, treatments, or diagnoses.
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17 Responses and Objections:

18 HHS Defendants object to this request as Plaintiffs' definition of "putative
19 class members" is overly broad and is not consistent with the Court's definition of
20 the class certified in its November 5, 2019 Order. This request is overly broad and
21 unduly burdensome in that it does not provide any data parameters or limitations on
22 the request for documents.

23 HHS Defendants object to this request because it is not proportionate to the
24 needs of this case. The class is broadly defined and includes several thousand class
25 members. To compile "all" documents relating to "any health examination" as to each
26 child of a class member is an unnecessary burden on HHS as compliance would be
27 very expensive and extremely burdensome. HHS would have to search and collect
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1 health documents for thousands of children of class members in over one hundred
2 care providers' facilities across the country. HHS would have to deploy hundreds of
3 ORR staff resulting in considerable hardship to ORR's core functions and its ability
4 to care for the unaccompanied alien children presently in its custody.

5 To the extent that ORR has responsive non-privileged information, subject to
6 and without waiving the foregoing objections, ORR will produce the medical records
7 of the Named Plaintiffs' children identified in the Plaintiffs' complaint, provided that
8 a protective order is in place. For the health information of the thousands of children
9 of class members, HHS Defendants propose that Plaintiffs select a statistical
10 sampling number of children of class-members whose health information they would
11 like to obtain, rather than seeking a burdensome discovery of health information for
12 all of the children of class members.

13 In addition, ORR will not release any medical or mental health records of a
14 child of a class member, absent a signed waiver from the child's legal guardian,
15 consenting to the disclosure. If a signed waiver from the child's legal guardian is
16 provided, and consistent with the terms of a protective order to be entered in this case,
17 Defendant HHS (through Defendant ORR) will produce the health information for
18 the list of children identified by Plaintiffs. *See also* DHS Response to RFP No. 13.
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20 **REQUEST FOR PRODUCTION NO. 14**

21 All DOCUMENTS reflecting any policy, manual, procedure, training
22 material, or other similar document, applicable to or relating to the government's
23 provision of medical services to PUTATIVE CLASS MEMBERS and their
24 children.
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1 Responses and Objections:

2 HHS Defendants object to this request as Plaintiffs' definition of "putative
3 class members" is overly broad and is not consistent with the Court's definition of
4 the class certified in its November 5, 2019 Order. This request is overly broad and
5 unduly burdensome in that it does not provide any data parameters or limitations on
6 the request for documents. HHS Defendants object to this request to the extent
7 Plaintiffs purport to require the disclosure of information in the possession, custody
8 or control of entities other than HHS Defendants, Fed. R. Civ. P. 34, or seek
9 information that can and should be sought from another entity. To the extent that
10 these requests appear to seek information from DHS, HHS Defendants direct
11 Plaintiffs to DHS Defendants who can provide responses and objections to requests
12 directed to that agency. *See* DHS Response to RFP No. 14.

13 Further, this request is not limited to information generated or existing during
14 a time period that is relevant to the Parties' claims and defenses. *See generally* Compl.
15 (requesting a court order requiring Defendants to provide mental-health screenings
16 before and after reunification to assess Plaintiffs' need for subsequent trauma-
17 informed medical and mental-health services and to offer appropriate trauma-
18 informed medical and mental-health services); *see also* Fed. R. Evid. 401 (defining
19 "relevance"); Fed. R. Civ. Procedure 26(b)(1) ("Parties may obtain discovery
20 regarding any nonprivileged matter that is relevant to any party's claim or defense
21 and proportional to the needs of the case, considering the importance of the issues at
22 stake in the action, the amount in controversy, the parties' relative access to relevant
23 information, the parties' resources, the importance of the discovery in resolving the
24 issues, and whether the burden or expense of the proposed discovery outweighs its
25 likely benefit.").

26 Notwithstanding the general and specific objections, and without waiving any
27 objections, HHS will produce copies of any policy, manual, procedure, or training
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1 material relating to medical services provided to UACs in its custody. HHS will
2 produce the responsive documents on a rolling basis once a protective order is in
3 place.

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5 **REQUEST FOR PRODUCTION NO. 15**

6 All DOCUMENTS relating to or similar to the Inmate Health Message Slip
7 that You submitted in this litigation (D.E. 138), including but not limited to
8 communications regarding the Inmate Health Message Slip or similar documents.

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10 **Responses and Objections:**

11 HHS Defendants object to this request to the extent Plaintiffs purport to require
12 the disclosure of information in the possession, custody, or control of entities other
13 than HHS Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
14 sought from another entity. The Inmate Health Message Slip is not a HHS document.
15 To the extent that this request appears to seek information from DHS, HHS
16 Defendants direct Plaintiffs to DHS Defendants who can provide responses and
17 objections to requests directed to that agency. *See* DHS Response to RFP No. 15.
18 Based on these objections, HHS Defendants will not be producing documents
19 responsive to this request.

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21 **REQUEST FOR PRODUCTION NO. 16**

22 All DOCUMENTS YOU have produced or will produce in other litigation
23 related to the ZERO TOLERANCE SEPARATION Policy, including but not limited
24 to documents produced in *Ms. L. v. U.S. Immigration and Customs Enforcement*, No.
25 3:18-cv-00428 (S.D. Cal.) (Sabraw, J.).

1 Responses and Objections:

2 HHS objects to this request as overbroad and vague as it seeks documents that
3 Defendants “will produce in other litigation” related to the Zero Tolerance Separation
4 Policy. HHS Defendants object to this request to the extent it seeks information
5 regarding a “Zero Tolerance Separation Policy,” which does not exist. The Zero
6 Tolerance Policy issued by then-Attorney General Sessions, dated April 6, 2018, sets
7 forth a policy regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a).
8 On May 11, 2018, then-Secretary Nielsen issued a memorandum directing “all DHS
9 law enforcement officers at the border to refer all illegal border crossers to the
10 Department of Justice for criminal prosecution to the extent practicable.”

11 This request is not limited to information generated or existing during a time
12 period that is relevant to the Parties’ claims and defenses. HHS Defendants object to
13 this request to the extent that it seeks to obtain information protected from disclosure
14 by protective orders entered in other litigation.

15 HHS further objects to this request as unreasonably burdensome and not
16 proportionate to the needs of this case. HHS is litigating numerous cases in Federal
17 District Court, as well as administrative claims, pertaining to the Zero Tolerance
18 Policy. Some of these cases are handled by various United States Attorneys’ Offices
19 across the country and other Divisions within the U.S. Department of Justice. It would
20 be unduly burdensome and expensive to comply with this extremely broad request
21 because HHS would have to collect and produce all the documents produced or that
22 the agency will produce in all cases related to the Zero Tolerance Policy, regardless
23 of whether these documents are relevant to any claims or defenses in this litigation.
24 Based on these objections, HHS Defendants will not be producing documents
25 responsive to this request.

1 DATED: December 17, 2019

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2 **CERTIFICATE OF SERVICE**
3

4 IT IS HEREBY CERTIFIED THAT:
5

6 I, Nicole N. Murley, am a citizen of the United States and am at least eighteen years
7 of age. My business address is 450 Fifth Street, NW, Washington, DC 20001. I
8 have caused service of the accompanying Defendant HHS's Supplemental
9 Responses to Plaintiffs' First Set of Requests for Production on all counsel of
10 record by serving Plaintiffs' counsel by electronic mail. I declare under penalty of
perjury that the foregoing is true and correct.

11
12 DATED: December 17, 2019

/s/ Nicole N. Murley
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